

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding )  
Related to a Competitive )  
Bidding Process for Firm )  
Generating Capacity on Maui. )  
\_\_\_\_\_ )

DOCKET NO. 2007-0403

ORDER NO. 23872

Filed Dec. 6, 2007  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

2007 DEC -7 A 8:36

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ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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Docket No. 2007-0403

Order No. **23872**

Order

By this Order, the commission opens this docket, pursuant to the Framework for Competitive Bidding dated December 8, 2006, to receive filings, review approval requests, and resolve disputes, if necessary, related to MAUI ELECTRIC COMPANY, LIMITED's ("MECO") plan to proceed with a competitive bidding process to acquire two separate increments of approximately 20 to 25 MW of firm generating capacity on the island of Maui in the 2011 and 2015 timeframes ("Competitive Bidding Process").

I.

Background

A.

Framework

By Decision and Order No. 23121, filed on December 8, 2006, in Docket No. 03-0372 ("Competitive Bidding Docket"), the commission adopted a Framework for Competitive Bidding ("Framework") to govern competitive bidding as a mechanism for acquiring new energy generation in Hawaii.

Under the Framework, competitive bidding is the required mechanism for acquiring a future generation resource or a block of generation resources, subject to certain conditions and exceptions.<sup>1</sup> The process of acquiring a future generation resource through a competitive bidding process is described in the Framework.

As a general matter, the "primary role" of the commission in a competitive bidding process is to ensure that each competitive bidding process "is fair in its design and implementation so that selection is based on the merits"; that projects selected through a competitive bidding process are consistent with the utility's approved integrated resource plan ("IRP"); that the utility's actions represent prudent practices; and that throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.<sup>2</sup>

To assist the commission, the Framework requires the use of an Independent Observer when the utility or its affiliate seeks to advance a project proposal or when the commission otherwise determines.<sup>3</sup> The Independent Observer has numerous obligations under the Framework, which include monitoring all steps in the competitive bidding process, including the communications between the utility and bidders; certifying to the commission at various stages of the competitive bidding process

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<sup>1</sup>Framework, Part II.A.3, at 3-4.

<sup>2</sup>Framework, Part III.B.1, at 12.

<sup>3</sup>Framework, Part III.C.1, at 13.

that the utility's judgments create no unearned advantage for the utility; advising the utility on its decision-making during the various stages of the competitive bidding process; and reporting to the commission on its monitoring results during each stage of the process.<sup>4</sup>

The commission's duties in a competitive bidding process are also delineated in the Framework. Specifically:

- The commission will review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP.
- The commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V of the Framework.
- The commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to the Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.8 of the Framework shall not apply. In reviewing such contracts, the commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.
- If the utility identifies its self-build or turnkey project as superior to bid proposals, the utility shall seek commission approval in keeping with established CIP Approval Requirements.
- The commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V of the Framework.

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<sup>4</sup>Framework, Part III.C.2, at 13-15.



Framework, Part III.B, at 12-13.

As "[t]imely [c]ommission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process," the commission implemented an expedited procedure for competitive bidding processes.<sup>5</sup> "[W]henver [c]ommission review, approval, consent, or action is required under th[e] Framework, the [c]ommission may do so in an informal expedited process. The [c]ommission hereby authorizes its Chairman, or his designee (which designee, may be another Commissioner, a member of the [c]ommission staff, [c]ommission hearings officer, or a [c]ommission hired consultant), in consultation with other Commissioners, [c]ommission staff, and the Independent Observer, to take any such action on behalf of the [c]ommission."<sup>6</sup>

In addition, according to the Framework, "[t]he [c]ommission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue."<sup>7</sup> In resolving disputes, the commission will use the informal expedited process described above within thirty (30) days and "[t]here shall be no right to hearing or appeal from this informal expedited dispute resolution process."<sup>8</sup>

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<sup>5</sup>Framework, Part III.B.8, at 13.

<sup>6</sup>Framework, Part III.B.8, at 13.

<sup>7</sup>Framework, Part V, at 28.

<sup>8</sup>Framework, Part V, at 28.

B.

MECO's Letter

By letter dated and filed on November 2, 2007, MECO requested that the commission "open a new docket for the purposes of receiving filings, reviewing approval requests, and resolving disputes, if necessary, related to MECO's plan to proceed with a competitive bidding process to acquire approximately 20 to 25 [MW] increments of firm generating capacity on the island of Maui in both the 2011 and 2015 timeframes."<sup>9</sup> MECO also requested commission approval of a contract between Hawaiian Electric Company, Inc. ("HECO") and Accion Group, Inc. ("Accion") to act as an Independent Observer to oversee the Competitive Bidding Process ("Independent Observer Contract").

According to MECO, "expeditious action" is requested by the commission "so that activities related to the proposed competitive bidding process to acquire 20 to 25 MW increments of firm generating capacity in both the 2011 and 2015 timeframes on the island of Maui can henceforth proceed."<sup>10</sup>

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<sup>9</sup>Letter from Edward L. Reinhardt, MECO's President, dated and filed November 2, 2007, at 1.

<sup>10</sup>Id. at 2.

## II.

### Initiation of This Docket

#### A.

##### Authority

Consistent with the Framework, the commission opens this docket to serve as a central location for filings related to the Competitive Bidding Process, and to provide a forum for any necessary review and resolution of disputes.<sup>11</sup> In doing so, the commission notes that it is not negating any of the requirements of the Framework by opening this docket; indeed, this docket is intended to facilitate in fulfilling the requirements of the Framework. As such, the duties and obligations of the utility, as delineated in the Framework continue to apply. Likewise, the commission's involvement in the Competitive Bidding Process remains as described in the Framework. Any commission review, approval, consent, or action required under the Framework will be addressed through the informal expedited process, as set forth in Parts III.B.8 and V of the Framework. As such, the commission does not consider this docket a contested case proceeding. It merely is a repository for the requisite filings, and a forum for resolution of approval requests and disputes in the manner and under the circumstances described in the Framework.

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<sup>11</sup>See, e.g., In re Public Utilities Commission, Docket No. 2007-0331, Order No. 23699, filed on October 9, 2007 (initiating a proceeding related to a competitive bidding process for renewable energy on Oahu)

Any subsequent filings related to the Competitive Bidding Process should be filed in this docket. This is not a requirement that all documents generated in connection with the Competitive Bidding Process be filed in this docket; only those filings required by the Framework or deemed necessary or desirable by MECO, any interested parties, or the commission, should be filed in this docket.

All matters that may require commission approval related to the Competitive Bidding Process, with the exception of the approval of any contracts that may result from the Competitive Bidding Process,<sup>12</sup> will be resolved in this docket.

B.

Named Parties

As this docket pertains to MECO's Competitive Bidding Process, the commission names MECO as a party to this proceeding. The commission also names the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY (the "Consumer Advocate"), the agency statutorily mandated to represent, protect, and advance the interests of consumers of utility service and an ex officio party to commission proceedings.<sup>13</sup>

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<sup>12</sup>Framework, Part III.B.4, at 13.

<sup>13</sup>Hawaii Revised Statutes § 269-51; Hawaii Administrative Rules § 6-61-62.

C.

Protective Order

If a protective order to govern the treatment of certain documents is desired, the parties (and intervenors and participants, if any) shall file a stipulated protective order for the commission's review and approval within forty-five (45) days from the date of this Order. If the parties (and intervenors and participants, if any) are unable to stipulate, each party or participant shall file a proposed protective order for the commission's review and consideration within the forty-five (45)-day filing deadline.

III.

Independent Observer Contract

As noted above, MECO's November 2, 2007 letter, which is attached to this Order, contains a request for approval of the Independent Observer Contract. With respect to selection and contracting of an Independent Observer, the Framework states:

6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates. The electric utility's contract with the Independent Observer shall be acceptable to the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the

Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding, and may defer the costs prudently incurred for the Independent Observer (i.e., deferred accounting).

Framework, Part II.C.6, at 16.

Here, MECO (along with HECO and Hawaii Electric Light Company, Inc. (collectively, the "HECO Companies")) have already submitted a list of Independent Observer candidates, which the commission approved in the Competitive Bidding Docket.<sup>14</sup> Included in the approved list of Independent Observer candidates was Alan Kessler, Managing Director of Accion. The Independent Observer Contract, however, was signed by Harold Judd, Vice President of Accion. Mr. Judd, along with Mr. Kessler and other Accion employees are included in the list of those Accion "consultants" that may be working on the Independent Observer Contract. As the commission approved Mr. Kessler as an Independent Observer, it expects that Mr. Kessler will be performing the role of Independent Observer for this Competitive Bidding Process. This does not mean that other Accion employees may not perform work under the Independent Observer Contract; only that Mr. Kessler, at a minimum, should be responsible for overseeing the performance of the duties required by Accion under the contract.

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<sup>14</sup>See Decision and Order No. 23503, filed on June 22, 2007, in Docket No. 03-0372.

While the commission is cognizant that there may be other Accion employees who are as qualified as Mr. Kessler to act as an Independent Observer for this Competitive Bidding Process, from Accion, only Mr. Kessler is a qualified Independent Observer under Decision and Order No. 23503. Accordingly, Mr. Kessler should be responsible for the contract. That said, the commission does not foreclose the possibility that the HECO Companies may request, at some point, to add Mr. Judd to the list of qualified Independent Observers; and for approval of Mr. Judd to act as Independent Observer for this Competitive Bidding Process. Like Mr. Kessler, Mr. Judd (or anyone else for whom the HECO Companies seek to include as a qualified Independent Observer on the list of Independent Observers) would need to provide the commission with sufficient evidence that he or she is qualified to act as an Independent Observer.

With respect to the Independent Observer Contract, the Framework requires that it be "acceptable to the [c]ommission, and provide, among other matters, that the Independent Observer: (a) report to the [c]ommission and carry out such tasks as directed by the [c]ommission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the [c]ommission; and (c) can be terminated by the [c]ommission without the utility's consent, if the [c]ommission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so."<sup>15</sup>

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<sup>15</sup>Framework, Part II.C.6, at 16.

Having reviewed the Independent Observer Contract, it appears that all of the provisions required by the Framework are included in the contract, and, as a whole, the contract is acceptable to the commission. Accordingly, the commission approves the Independent Observer Contract.

#### IV.

##### Draft RFP

Under the Framework, the following process should take place prior to distributing the RFP:

6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:
  - a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;
  - b. The utility holds a technical conference to discuss the draft RFP with interested parties (which may include potential bidders);
  - c. Interested parties submit comments on the draft RFP to the utility and the Commission;
  - d. The utility determines whether and how to incorporate recommendations from interested parties in the draft RFP;
  - e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:
    - (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.



- (ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer's comments and recommendations.

Framework, Part IV.B.6, at 19.

As set forth in Part IV.B.6, MECO's draft and proposed RFP, and any comments related to the draft RFP, as well as comments and recommendations by the Independent Observer on the proposed RFP, shall be filed in this docket. Any comments by interested parties on the draft RFP, pursuant to Part IV.B.6.c, shall be filed in this docket and served on the utility no later than thirty (30) days after the technical conference to discuss the draft RFP with interested parties, see Part IV.B.6.b.

## V.

### Orders

#### THE COMMISSION ORDERS:

1. This docket is opened to receive filings, review approval requests, and resolve disputes, if necessary, related to MECO's proposal to proceed with a competitive bidding process to acquire two separate increments of approximately 20 to 25 MW of firm generating capacity on the island of Maui in the 2011 and 2015 timeframes.

2. MECO and the Consumer Advocate are parties to this docket.

3. If a protective order to govern the treatment of certain documents is desired, the parties (and intervenors and

participants, if any) shall file a stipulated protective order for the commission's review and approval within forty-five (45) days of the date of this Order. If they are unable to stipulate, each party (and intervenor or participant, if any) shall file a proposed protective order for the commission's review and consideration within the forty-five (45) day filing deadline.


4. The contract between HECO and Accion for an Independent Observer to oversee MECO's Competitive Bidding Process, is approved, as provided herein.

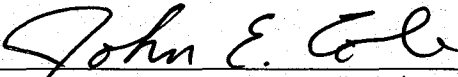
5. Any comments by interested parties on the draft RFP, pursuant to Part IV.B.6.c, shall be filed in this docket and served on the utility no later than thirty (30) days after the technical conference to discuss the draft RFP with interested parties.

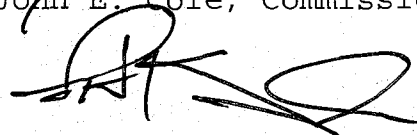
DONE at Honolulu, Hawaii

DEC - 6 2007

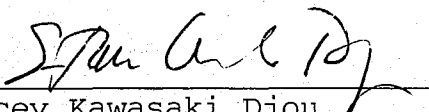
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

laa



November 2, 2007

**Edward L. Reinhardt**  
*President*

The Honorable Chairman and Members of the  
Hawaii Public Utilities Commission  
465 South King Street, First Floor  
Kekuanaoa Building  
Honolulu, Hawaii 96813

FILED  
2007 NOV -2 P 4: 11  
PUBLIC UTILITIES  
COMMISSION

Dear Commissioners:

Subject: Maui Electric Company, Limited ("MECO")  
Firm Capacity Request for Proposals  
Request to Open New Docket and Approval of Independent Observer Contract

MECO respectfully requests the Commission to open a new docket for the purposes of receiving filings, reviewing approval requests, and resolving disputes, if necessary, related to MECO's plan to proceed with a competitive bidding process to acquire approximately 20 to 25 megawatt ("MW") increments of firm generating capacity on the island of Maui in both the 2011 and 2015 timeframes.<sup>1</sup>

At this time, MECO also respectfully submits for Commission approval, an executed contract with Accion Group, Inc. to serve in the required role of Independent Observer for MECO's subject competitive bidding effort. (See Attachment.)

By letter dated May 9, 2007, Hawaiian Electric Company, Inc. ("HECO"), MECO, and Hawaii Electric Light Company, Inc., (collectively, the "HECO Companies") submitted for Commission approval a list of qualified candidates for the Independent Observer position for future HECO Companies' competitive bidding processes to acquire a generation resource, or block of generating resources. The four candidates identified to be qualified for the role of Independent Observer included: (1) Barry J. Sheingold, President, New Energy Opportunities, Inc.; (2) Alan Kessler, Managing Director, Accion Group, Inc.; (3) Matthew I. Kahal, Economic

<sup>1</sup> In Section 9.9.4 of MECO's IRP-3 Report, MECO identified its intent to issue an RFP scoped for "approximately 20 to 25 MW of firm generating capacity" resources needed on the island of Maui in both the 2011 and 2013 timeframes. In addition, in the Stipulation Regarding Hearing and Commission Approval ("Stipulation") between MECO and the Division of Consumer Advocacy ("Consumer Advocate"), filed September 21, 2007 in Docket No. 04-0077, the Consumer Advocate agreed with MECO's proposal to proceed with competitive bidding for the described firm capacity increments needed in the 2011 and 2015 timeframes. (In the Stipulation, MECO explained that, for planning purposes, the timing of the need for the second increment of 20 to 25 MW of firm generating capacity was deferred from the 2013 to the 2015 timeframe.)

Consultant, Exeter Associates, Inc.; and (4) Carl Freedman, Principal, Haiku Design & Analysis. By Decision and Order No. 23503, filed June 22, 2007 in Docket No. 03-0372, the Commission approved the list of qualified candidates for the Independent Observer position.

The contract with Accion Group, Inc. for the Independent Observer position is filed pursuant to §III.C.6 of the Framework for Competitive Bidding dated December 8, 2006 (the "Framework"), adopted by the Commission in D&O 23121 (Docket No. 03-0372). Section III.C.6 of the Framework requires that the electric utility's contract with the Independent Observer be acceptable to the Commission and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so.

MECO respectfully requests expeditious action by the Commission to open a new docket for MECO's planned competitive bidding process and approve the contract with Accion Group, Inc. for the Independent Observer position so that activities related to the proposed competitive bidding process to acquire approximately 20 to 25 MW increments of firm generating capacity in both the 2011 and 2015 timeframes on the island of Maui can henceforth proceed. In Section 9.9.2 of MECO's IRP-3 Report, MECO noted that:

The steps necessary to conduct a competitive bidding process for firm capacity that includes a utility self-build option is anticipated to take approximately two to three years to conduct as shown in Section 12.2.5.1, excluding the time required for securing all necessary regulatory permits and approvals, land rights, and implementation of actual project engineering and design, equipment procurement, construction and commercial testing after a project is selected from among the bids. Thus, it appears uncertain whether non-utility firm capacity resources selected through the competitive bidding process contemplated under the Framework can be in service within the relative near-term timeframe (2011 and 2013)<sup>2</sup> that firm capacity is needed pursuant to the IRP. This extended lead time to acquire large non-utility firm capacity through an RFP poses a dilemma for MECO. However, where an RFP issued under the Framework has at least a reasonable chance to yield a viable non-utility resource to meet system needs, MECO is committed to issuing an RFP to test whether the market can effectively respond to meet its needs.

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<sup>2</sup> As previously noted, in the Stipulation filed on September 21, 2007, MECO explained that for planning purposes, the timing of the need for the second increment of 20 to 25 MW of firm generating capacity was deferred from the 2013 to the 2015 timeframe. The first increment of firm generating capacity is still required in the 2011 timeframe.



Accordingly, MECO confirms its commitment to pursue competitive bidding under the present circumstances. However, MECO will undoubtedly need the help of all stakeholders and participants in such an RFP process to commit to cooperatively adhere to appropriate timelines (which will need to be expedited) in order to effectively and efficiently implement an RFP, and at a minimum reach the process stage of resource selection no later than early 2009, given the pressing need to have additional firm capacity on-line by 2011. A critical initial step required by the Framework in order to proceed with the planned RFP is to obtain the Independent Observer.

Sincerely,

*Edward L. Reinhardt*

Attachment

cc: Division of Consumer Advocacy (with Attachment)



WORK AUTHORIZATION NO. PXA-07-006-01-01  
WORK ORDER NO. HP002585

**COMPETITIVE BIDDING INDEPENDENT OBSERVER SERVICES**  
**AGREEMENT**

This COMPETITIVE BIDDING INDEPENDENT OBSERVER SERVICES AGREEMENT (hereinafter "Agreement" or "Contract") is made on October 18, 2007, by and between HAWAIIAN ELECTRIC COMPANY, INC. (hereinafter "Company"), a Hawaii corporation, whose principal place of business and address is 900 Richards Street, Honolulu, Hawaii 96813 and whose mailing address is P. O. Box 2750, Honolulu, Hawaii 96840-0001 and ACCION GROUP, INC. (hereinafter "Consultant"), a New Hampshire corporation whose principal place of business and mailing address is 244 North Main Street, Concord, NH 03301, doing business in Hawaii.

**W I T N E S S E T H:**

WHEREAS, Company is in the business of generation, transmission, and distribution of electrical power on the Island of Oahu, State of Hawaii; and

WHEREAS, Company requires certain professional services to be accomplished in connection with competitive bidding relating to its integrated resources and generation planning; and

WHEREAS, Consultant is in the business of performing the professional services needed by Company; and

WHEREAS, Consultant represents that it and its subcontractors are equipped and have the expertise necessary to perform the particular professional services required under this Agreement,

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, Company and Consultant hereby agree that Consultant will perform professional services work for Company under the following terms and conditions:

## I. SCOPE OF WORK

1.1 Project Description - Consultant agrees to furnish all labor, tools, materials, equipment, meals, lodging, transportation, and supervision necessary to complete the following work in a professional and diligent manner, and as more specifically described in Attachment A: Provide services as an independent observer to monitor, advise and report on the Company's ACCION GROUP, INC. Project (the "Project") in accordance with the Hawaii Public Utilities Commission's (the "Commission") *Framework for Competitive Bidding*, dated December 8, 2006 ("Framework"). Such services for the Project are hereinafter referred to as the "Work." Without limiting the foregoing, the Work shall include reporting to the Commission and carrying out such tasks as directed by the Commission, including the tasks described in the Framework. Any special terms and conditions set forth in Attachment A shall take precedence over any conflicting provisions found in this Contract.

1.2 Term - The Term of this Contract shall be from October 15, 2007 until the competitive bidding process for the Project is completed, which is currently estimated to be in June 2009.

## II. COMPENSATION

2.1 Time and Expenses - Consultant shall be entitled to compensation for Work performed and expenses incurred under this Contract on a time and expenses basis. The hourly rates and types of expenses which Consultant may invoice to Company under this Contract are stated in Attachment B. Except as set forth in Attachment B, no other rates or expenses may be charged by Consultant unless agreed to by the parties in an amendment hereto. It is expected that the total amount invoiced pursuant to this Contract will not exceed Two Hundred Thirty Thousand Dollars (\$230,000), the Contract Cap, which consists of the following sub-categories of the Work: Phase 1 - RFP Development = \$39,000 Phase 2 - Bid Evaluation = \$108,750 and Phase 3 - Contract Negotiation = \$58,000. In the event that Consultant projects that the total cost of services to be provided under this Contract will be in excess of the Contract Cap, or the cost of any phase of the Work described above will exceed the cost for such phase, then Consultant shall prepare in writing an explanation of the services provided to date and the associated cost, the expected services to be provided in the future under the Contract and the estimated cost thereof, and a request for an increase in the budget for Work in excess of the Contract Cap if anticipated to be necessary. Company shall approve or disapprove the request in its reasonable discretion, provided that any approval to increase the Contract Cap shall be subject to Commission approval.

2.2 Invoicing - Within 15 days after completion of each month's Work, Consultant will submit its invoice for all Work rendered and all allowable expenditures incurred during that month. Such invoice shall be in a form approved by Company and shall at a minimum show the total hours of Work for that month by each Consultant employee or subcontractor, the hourly rate for each employee or subcontractor, and an itemized list of all allowable expenditures made during the month. Upon request by Company, Consultant shall provide supporting documentation, including but not limited



to invoices and receipts, as evidence of such expenditures. The invoice shall reference the Company's Designated Representative, the Company purchase order or Service Contract number, if any, and any additional information required as part of the Scope of Work hereunder. All invoices should be addressed as follows:

Barry Nakamoto  
Director, Generation Bidding  
Hawaiian Electric Company, Inc.  
P. O. Box 2750  
Honolulu, Hawaii 96840-0001

The ORIGINAL invoice with ALL REQUIRED SUPPORTING DOCUMENTATION must be sent to the Company's Designated Representative as indicated above. Failure to follow this procedure may cause a delay in payment.

2.3 Payments - Payment of a properly submitted monthly invoice shall be made within thirty (30) days after receipt by Company. Contractor may submit the monthly invoice by email.

2.4 Withholding of Payments; Set-off - Company may withhold from any payment: (1) any portion of the invoiced amount that is incorrectly invoiced, or (2) any portion of the invoiced amount that is disputed in good faith by Company; provided that the Company states the basis in writing for such withholding and the Commission consents to any such withholding. Company shall promptly pay the undisputed amount of the invoice or the amount of the invoice that is correctly invoiced.

### III. STATUS OF THE PARTIES

3.1 Independent Contractor - Consultant will act solely as an independent contractor of Company, and not as Company's agent or servant for any purpose. All employees of Consultant will work under the supervision of Consultant and not act as Company's agents or servants for any purpose.

3.2 Subletting or Assigning Contract - Consultant shall not assign any portion of the Contract or any rights or obligations under this Contract without the prior written consent of Company, and of the Commission, if required. Company acknowledges that Consultant has the right to engage the subcontractors identified in Attachment B, if any, to assist Company in the performance of the Work, and Company approves Consultant's engagement of such subcontractors. In addition, Consultant may retain additional subcontractors that satisfy the requirements set forth in Attachment B with the written consent of Company.

#### IV. POINTS OF CONTACT

4.1 Company's Designated Representative - As used in this Contract, "Company's Designated Representative" shall be Barry Nakamoto, HECO's Director of Generation Bidding. Company's Designated Representative shall be the point of contact for and have the authority to speak on behalf of Company concerning all matters related to this Contract, except that he shall not have the authority to amend the Contract.

4.2 Consultant's Designated Representative - As used in this Contract, "Consultant's Designated Representative" shall be Harold Judd. During the performance of the Work hereunder, he can be reached at the Consultant offices in 244 North Main Street, Concord, NH 03301. He shall be the point of contact for and have the authority to speak on behalf of Consultant concerning all matters related to this Contract.

#### V. PERFORMANCE STANDARDS AND WARRANTY

5.1 Performance Standards - In selecting employees to undertake the Work under this Contract, Consultant shall select only those persons who are qualified by the necessary education, training and experience to provide diligent and professional performance of the particular Work for which each such employee is responsible. Consultant shall perform all Work in a professional and diligent manner. Consultant's personnel shall exercise that degree of skill and care consistent with the accepted professional standards in Consultant's field, and shall indemnify and hold Company harmless from any loss, including but not limited to reasonable attorneys' fees and costs, incurred by Company as a result of the negligent professional acts, errors or omissions of Consultant or any of Consultant's personnel; provided, that neither Consultant nor Company shall be liable to the other for any special indirect, consequential, incidental, punitive or exemplary damages.

5.2 Warranty - Correction of Defective or Substandard Work - Consultant acknowledges its responsibility for insuring that the procedures used in the performance of this Contract are sufficient to satisfactorily accomplish the Work. Consultant warrants that it shall promptly correct without expense to Company all Work which is not completed to the reasonable satisfaction of Company or Commission or which does not meet the performance standards established herein. Consultant shall make such corrections of defective work upon Company's written notice thereof anytime during the term of this Contract and up to 180 days after the Commission's final Decision and Order on Company's application for approval of the contract resulting from the Project ("Warranty Period").

5.3 Right to Reject - Due to the critical nature of Company's operations, Consultant agrees that if Company, with the consent of the Commission, and after reasonable consultation with Consultant, determines that any Consultant employee or subcontractor provided under this Contract shall be unsuitable for the performance of the Work, or that the continued presence of such employee or subcontractor on Company property is not consistent with the best interests of Company, then in such an instance Company may request that Consultant remove such employee from the Work and

Consultant shall forthwith comply with this request. Consultant will then promptly replace such employee or subcontractor with an employee or subcontractor who fully meets the standards under this Contract and will do so at no cost to Company.

## VI. INSURANCE AND INDEMNITY

6.1 Workers' Compensation - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of this Contract, Workers' Compensation and other similar insurance required by state or federal laws. In the event that Consultant fails to maintain such insurance as required by law, Consultant acknowledges and agrees that it will not seek or be entitled to any coverage under Owner's insurance.

6.2 Commercial General Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force at all times during the term of this Contract, Commercial General Liability insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS (\$1,000,000) for any occurrence.

6.3 Automobile Liability Insurance - Consultant and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full effect at all times during the term of this Contract, Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS (\$1,000,000) (\$1,000,000) per accident.

6.4 Waiver of Subrogation - Consultant and anyone acting under its direction will cause its insurers (except for Workers' Compensation insurance) to waive all rights of subrogation which Consultant or its insurers may have against Company, Company's agents, or Company's employees.

6.5 Company as Additional Insured - Insurance policies (except Workers' Compensation and Automobile Liability) providing the insurance coverage required in this Article will name Company, Company's agents, and/or Company's employees as an additional insured, as appropriate. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Company will be excess only and not contribute with this insurance.

6.6 Certificates of Insurance - Within ten (10) days of the date of this Contract, Consultant shall file with the Company's Designated Representative certificates of insurance certifying that each of the foregoing insurance coverages is in force, and further providing that the Company will be given thirty (30) days' written notice of any material change in, cancellation of, or intent not to renew any of the policies. Receipt of any certificate showing less coverage than requested is not a waiver of the Consultant's obligation to fulfill the requirements.

6.7 Indemnity - Consultant and anyone acting under its direction or control or on its behalf shall indemnify, defend and hold harmless Company from and against all

losses, damages, claims and actions, and all expenses incidental to such losses, damages, claims or actions, including but not limited to reasonable attorneys' fees and costs, based upon or arising out of damage to property or injuries to persons, or other tortious acts to the extent negligently or tortiously caused or contributed to by Consultant or anyone acting under its direction or control or in its behalf in the course of its performance under this Contract; provided Consultant's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability to the extent based upon the negligence or tortuous conduct of Company.

## VII. CONFIDENTIALITY AND NON-DISCLOSURE

7.1 Confidentiality and Non-Disclosure. During the course of the Work, Company may disclose to Consultant (a) confidential Company business or other proprietary information, and (b) confidential proposals submitted to Company and information relating thereto from bidders (collectively, "Confidential Information"). Subject to Consultant's obligations under the Framework, which obligations shall prevail over any actual or perceived limitations contained in this section, the following shall apply to Consultant's receipt of Confidential Information.

Consultant will hold in confidence and, without Company's consent, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information except as permitted herein. Consultant may only disclose the Confidential Information to its officers, directors, employees, professional advisors and independent contractors and consultants with a need to know the information for the implementation or exercise of rights and/or performance of obligations under or arising from this Agreement, provided that such professional advisors and independent contractors and consultants are bound by written confidentiality agreements with terms and conditions that are no less restrictive than those contained in this section. Without limiting the foregoing, Consultant agrees that it will exercise at least the same standard of care in protecting the confidentiality of the Confidential Information as it does with its own confidential information of a similar nature, but in any event, no less than reasonable care.

Confidential Information for purposes of this Agreement shall not include information if and only to the extent that the information: (i) is or becomes a part of the public domain through no act or omission of the Consultant; (ii) was in the Consultant's lawful possession prior to the disclosure and had not been obtained by the Consultant either directly or indirectly from Company; or (iii) is lawfully disclosed to Consultant by a third party without restriction on disclosure. Confidential Information may also be disclosed by Consultant pursuant to a requirement the Commission or other governmental agency, regulatory body or by operation of law, provided that Consultant shall disclose only that part of the Confidential Information that it is required to disclose and, with respect to subpoenas or other legal process, shall notify Company prior to such disclosure in a timely fashion in order to permit Company to lawfully attempt to prevent or restrict such disclosure should it so elect, and shall take all other reasonable and lawful measures to ensure the continued confidential treatment of the same by the party to which the Confidential Information is disclosed.

Notwithstanding the foregoing, this section shall not prohibit Consultant from disclosing Confidential Information to the Commission (or others as directed by the Commission) to the extent necessary to comply with Consultant's obligations under the Framework and the Scope of Work hereunder.

## VIII. TERMINATION FOR CAUSE

8.1 Conditions Allowing Termination - The Commission's approval is necessary before Company may terminate this Contract. Further, Consultant acknowledges and agrees that the Commission may terminate this Contract, with or without Company's consent, on behalf of the Company if the Commission deems it to be in the public interest in the furtherance of the objectives of the Framework to do so. In addition, The Company (or the Commission) may terminate this Contract for cause if:

- (1) Consultant fails or is unable to perform its obligations under this Contract;
- (2) Consultant is in material breach of its obligations under this Contract;
- (3) Consultant makes a general assignment for the benefit of its creditors;
- (4) Consultant has a receiver appointed because of insolvency; or
- (5) Consultant files bankruptcy or has a petition for involuntary bankruptcy filed against it.

8.2 Notice Required Before Termination - Before seeking to terminate this Contract for cause, Company shall give written notice to Consultant of the existence of grounds ("default") allowing termination for cause under Section 8.1 herein and of Company's intention to seek termination if the default is not cured to the reasonable satisfaction of Company within fifteen (15) days of such notice or such longer period of time as shall be stated in the notice. Consultant shall have the right to cure the default during the stated time period.

8.3 Company's Rights Upon Termination - If Consultant fails to cure the default within fifteen (15) days or such longer time as has been specified, Company may terminate this Agreement with the consent of the Commission and secure such substitute services as necessary and appropriate to complete the Work. In the event Company acquires substitute services under this provision, Consultant agrees to pay Company upon demand the difference between what the substitute services actually costs Company and what Consultant would have been paid had it completed the Work itself, provided that Company shall take all reasonable efforts to mitigate any damages resulting from the actions of or termination of Consultant. This provision shall survive termination of this Agreement for a period of two years.

## IX. TERMINATION FOR CONVENIENCE

9.1 Company's Rights – Notwithstanding Article VIII above, Company shall have the right to terminate this Contract for convenience at any time, with the consent of the Commission, by giving written notice of such to Consultant. Upon receiving notice of termination, Consultant shall discontinue the Work on the date specified in the notice.

9.2 Termination Prior to Commencement of Work - If this Contract is terminated prior to Consultant's having commenced any Work or preparation for Work, no payment shall be made to Consultant.

9.3 Termination After Commencement of Work - If this Contract is terminated for Company's convenience after Consultant has commenced any Work, Consultant will be compensated for costs properly incurred and for labor at the rates specified in the Contract for Work actually performed prior to the notice of termination and for any Work performed thereafter if necessary to finish a portion or portions of Work in progress at the time of termination, to the extent approved by Company.

9.4 Consultant's Duty to Mitigate - Consultant agrees that it has an affirmative duty to mitigate all costs upon notice of termination of this Contract for convenience of Company.

## X. FORCE MAJEURE

10.1 Excuse of Performance - Notwithstanding anything in this Contract to the contrary, neither party shall be liable nor responsible for failure to carry out any of its obligations under this Contract caused by Force Majeure. A party rendered unable to fulfill any obligation under this Contract by reason of Force Majeure shall make reasonable efforts to remove such inability in the shortest possible time, and the other party shall be excused from performance of its obligations until the party relying on Force Majeure shall again be in full compliance with its obligations under this Contract.

10.2 Definition - The term "Force Majeure" as used herein shall mean any cause beyond the control of the party affected, and which by reasonable efforts the party affected is unable to overcome, including without limitation the following: acts of God; fire, flood, landslide, lightning, earthquake, hurricane, tornado, storm, freeze, volcanic eruption or drought; blight, famine, epidemic or quarantine; act or failure to act of the other party; theft; casualty; war; invasion; civil disturbance; explosion; acts of public enemies; or sabotage.

## XI. LAWS, REGULATIONS AND PUBLIC ORDINANCES

11.1 Compliance - Consultant shall comply with applicable federal, state, and local statutes, regulations and public ordinances of any nature governing the Work, including without limitation, those statutes specifically referred to in this Article. Consultant shall indemnify and defend Company from any liability, fines, damages, costs, or expenses arising from Consultant's failure to comply with this Article.

11.2 Taxes - Consultant assumes exclusive liability for all contributions, taxes or payments required to be made because of persons hired, employed or paid by Consultant by the federal and state Unemployment Compensation Act, Social Security Acts and all amendments, and by all other current or future acts, federal or state, requiring payment by the Consultant on account of the person hired, employed, or paid by Consultant for Work performed under this Contract. Sales, use and excise taxes applicable to the value or use of any property incorporated, furnished, or otherwise supplied by Consultant shall be stated separately from the price or rates specified in Article II (COMPENSATION), and shall not be included in any computation of profit allowed by this Contract. Consultant assumes exclusive liability for all such taxes charged or chargeable upon any such goods or materials supplied by Consultant pursuant to this Contract.

11.3 Safety and Health Regulations - Consultant shall comply with all applicable federal, state and local laws and regulations pertaining to health, safety, sanitary facilities, and waste disposal. Consultant shall meet all applicable requirements of the Occupational Safety and Health Act of 1970 (OSHA) including all applicable amendments. Consultant shall also comply with any applicable standards, rules, regulations and orders promulgated under OSHA and particularly with the agreement for State development and enforcement of Occupational Health and Safety Standards as authorized by Section 18 of the Act to the extent applicable.

11.4 Equal Employment Opportunity - (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Consultant is aware of and is fully informed of Consultant responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part), if applicable, and shall be bound by and agrees to the provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference, to the extent applicable.

11.5 Employment of Disabled Veterans and Veterans of the Vietnam Era - (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-250.4 and 41 CFR 60-741.5.) Consultant agrees that it is and will remain in compliance with the applicable rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, The Affirmative Action Clause set forth in 41 CFR 60-250.4, the Rehabilitation Act of 1973 and the Equal Opportunity Clause set forth in 41 CFR 60-741.5, which clauses are incorporated by reference herein.

11.6 Notice of Employee Rights Concerning Payment of Union Dues or Fees - (Applicable to all contracts exceeding \$100,000) Consultant agrees that it shall comply with Executive Order 13201 and 29 CFR Part 470 regarding notice of employee rights concerning payment of union dues or fees, which are incorporated by reference herein, if applicable.

## XII. MISCELLANEOUS

12.1 Patents and Copyrights - Consultant agrees that in performing Work under this Contract, it will not use any process, program, design, device, or material which infringes on any United States patent or copyright or any trade secret agreement. Consultant agrees to indemnify, defend and hold harmless Company from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against Company for patent, copyright or trade secret infringement arising out of Consultant's Work. Company shall promptly notify Consultant of any such suit or proceeding and shall assist Consultant in defending the action by providing any necessary information.

12.2 Security and Company Rules - When on Company premises or carrying out Consultant's duties for Company, Consultant personnel shall comply with all applicable provisions of Company's Corporate Code of Conduct, Competitive Bidding Code of Conduct, Company's security regulations, information resource policies and all other applicable Company policies and practices that Company personnel and consultants are now or during the Work are asked to follow; provided, that Consultant has been provided actual notice of such practices and procedures and as long as compliance is not inconsistent with Consultant's Obligations under the Framework. Consultant shall advise its employees of these practices and procedures and secure their consent to abide by these procedures. Unless otherwise agreed to by the parties, Consultant's personnel shall observe the working hours of Company while working on Company's premises. Consultant agrees to cooperate fully and to provide any assistance necessary to Company in investigation of any security breaches which may involve Consultant or Consultant's employees or subcontractors.

12.3 Amendments - This Contract may be amended or supplemented by and only by written instrument duly executed by each of the parties.

12.4 Severability of Provisions - In the event a court or other tribunal of competent jurisdiction at any time holds that any provision of this Contract is invalid, the remainder of this Contract shall not be affected thereby and shall continue in full force and effect.

12.5 Entire Contract - This Contract shall constitute the entire understanding between the parties, superseding any and all previous understandings, oral or written, pertaining to the subject matter contained herein. The parties have entered into this Contract in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representation or information provided to one party by any representative of the other party. Neither party shall claim at any time that it



entered into this Contract in whole or in part based on any representation not stated in this Contract.

12.6 Applicable Law/Forum - This Contract is made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each party agrees and consents that any dispute arising out of this Contract, however defined, shall be brought in the State of Hawaii in a court of competent jurisdiction, provided, however, that either party, at its option may elect to submit any such dispute to binding arbitration pursuant to the commercial arbitration rules of the American Arbitration Association then in effect.

12.7 No Waiver - The failure at any time of either party to enforce any of the provisions of this Contract, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way construed to affect the validity of this Contract or any part hereof, or the right of any party thereafter to enforce each and every such provision.

12.8 Access to Records - Upon request, Consultant shall make available for inspection and audit by Company in Honolulu, Hawaii any and all records and/or documents relating to Work performed under this Contract during the performance of the Work and for a period of up to two (2) years from the completion of all Work under this Contract.

12.9 Regulatory Approvals - This Contract shall be contingent upon any and all required governmental and regulatory approvals, including those of the Commission.

12.10 Gender and Number - The terms "Company" and "Consultant," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine and neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

12.11 Attorneys' Fees and Costs - If there is a dispute between the parties and either party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or interpret the terms of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

12.12 Survival of Obligations - All defense, hold harmless, indemnity and confidentiality obligations hereunder shall survive termination of this Contract.

### XIII. COUNTERPARTS CLAUSE

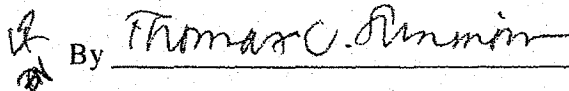
The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and

XIII. COUNTERPARTS CLAUSE

The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by appropriate representatives of each as of the date indicated.

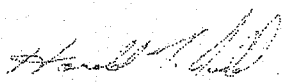
HAWAIIAN ELECTRIC COMPANY, INC.  
("Company")

By  Thomas C. Rimmer

Vice President, Power Supply

Date: 10/19/07

ACCION GROUP, INC.  
("Consultant")

  
By \_\_\_\_\_

Its Vice President

Date: 10/18/2007

XIII. COUNTERPARTS CLAUSE

The parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by appropriate representatives of each as of the date indicated.

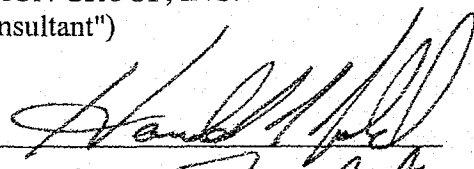
HAWAIIAN ELECTRIC COMPANY, INC.  
("Company")

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

ACCION GROUP, INC.  
("Consultant")

By 

Its Vice President

Date: 10/18/2007

**ATTACHMENT A**  
(Scope of Work)

Independent Observer for MECO 20 MW Firm Capacity Resource in 2011 and 2015  
Competitive Bidding Project  
Scope of Work

Project Description: See Exhibit 1.

In accordance with the Commission's decision the Competitive Bidding Docket,<sup>1</sup> an Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal in response to a need that is addressed by its Request for Proposals (RFP), or when the PUC determines otherwise. Company will utilize Consultant's services as an Independent Observer to provide guidance and recommendations on the competitive bidding process employed in accordance with the Commissions Competitive Bidding Framework (copy attached as Exhibit 1), hereafter referred to as the "Framework."

Consultant shall perform all tasks required of an Independent Observer under the Framework (Consultant shall assume and Independent Observer is required for this Project), including those specified in pages 13 through 16 of the Framework, and all other tasks required by the Commission or Company with respect to the Project.

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Exhibit 1

Nominal 20 MW Firm Capacity Resource in 2011 – Scope: Approximately 20 to 25 MW of firm generating capacity. The unit may be renewable or fossil-fueled, with a preference in resource evaluation for renewable energy. The unit should be capable of peaking or cycling duty where the unit can be started quickly (for example, less than 30-minute startup time) and can cycle off-line at least once per day. When on-line, the unit should be fully dispatchable from minimum to full load by the utility and should be capable of load-following, providing frequency control and voltage support according to standards to be determined by the utility. The unit should have black-start capability. At a minimum, the extent to which these attributes are provided by a resource will be considered in the evaluation of the resource. Whether some or all of these attributes will be evaluation criteria or threshold criteria has not been determined, and will be considered in the design and review of the RFP. Detailed specifications for the resource and definitions of the criteria will be developed at the time the RFP is developed.

Nominal 20 MW Firm Capacity Resource in 2015 – Scope: Approximately 20 to 25 MW of firm generating capacity. The unit may be renewable or fossil-fueled, with a preference in resource evaluation for renewable energy. The unit should be capable of peaking or cycling duty where the unit can be started quickly (for example, less than 30-minute startup time) and can cycle off-line at least once per day. When on-line, the unit should be fully dispatchable from minimum to full load by the utility and should be capable of load-following, providing frequency control and voltage support according to standards to be determined by the utility. The unit should have black-start capability. At a minimum, the extent to which these attributes are provided by a resource will be considered in the

**EXHIBIT 2 – Competitive Bidding Framework**

**FRAMEWORK FOR COMPETITIVE BIDDING**  
**December 8, 2006**

**STATE OF HAWAII**  
**PUBLIC UTILITIES COMMISSION**

Exhibit A

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**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION**

**FRAMEWORK FOR COMPETITIVE BIDDING  
December 8, 2006**

**I. DEFINITIONS**

As used in this Framework, unless the context clearly requires otherwise:

"Approved IRP" means an electric utility's IRP that has been approved by the Commission in the utility's IRP proceeding. As of the effective date of this Framework, the status of each utility's IRP is as follows: (1) on October 28, 2005, Hawaiian Electric Company, Inc. filed its 3<sup>rd</sup> IRP in In re Hawaiian Elec. Co., Inc., Docket No. 03-0253; (2) Maui Electric Company, Ltd. is scheduled to file its 3<sup>rd</sup> IRP by April 30, 2007, in In re Maui Elec. Co., Ltd., Docket No. 04-0077; (3) Hawaii Electric Light Company, Inc. is scheduled to file its 3<sup>rd</sup> IRP by December 29, 2006, in In re Hawaii Elec. Light Co., Inc., Docket No. 04-0046; and (4) on June 20, 2006, the Commission opened a proceeding for Kauai Island Utility Cooperative's 3<sup>rd</sup> IRP in In re Kauai Island Util. Coop., Docket No. 2006-0165.

"CIP Approval Requirements" means the procedure set forth in the Commission's General Order No. 7, Standards for Electricity Utility Service in the State of Hawaii, Paragraph 2.3(g), as modified by In re Kauai Island Util. Coop., Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004, and In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257, Decision and Order No. 21002, filed on May 27, 2004. "In general, [the] commission's analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the [electric] utility's application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that 'no part of the project may be included in the utility's rate base unless and until the project is in fact installed, and is used and useful for public utility purposes.'" Decision and Order No. 21001, at 12; and Decision and Order No. 21002, at 12.

"Code of Conduct" means a written code developed by the host electric utility and approved by the Commission to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The "Code of Conduct" is more fully described in Part IV.H.9.c of the Framework.

"Commission" means the Public Utilities Commission of the State of Hawaii.

"Competitive bid" or "competitive bidding" means the mechanism established by this Framework for acquiring a future energy generation resource or a block of generation resources by an electric utility.

"Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawaii.

"Contingency Plan" means an electric utility's plan to provide either temporary or permanent generation or load reduction programs to address a near-term need for capacity as a result of an actual or expected failure of an RFP process to produce a viable project proposal, or of a project selected in an RFP. The utility's Contingency Plan may be different from the utility's Parallel Plan and the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"Electric utility" or "utility" means a provider of electric utility service that is regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.

"Framework" means the Framework for Competitive Bidding dated December 8, 2006, adopted by the Commission in Docket No. 03-0372.

"Independent Observer" means the neutral person or entity retained by the electric utility to monitor the utility's competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.

"IPP" means an independent power producer that is not subject to the Commission's regulation or jurisdiction as a public utility.

"IRP" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework. The overall goal of integrated resource planning is the identification of the resources or the mix of resources for meeting near and long-term customer energy needs in an efficient and reliable manner at the lowest reasonable cost. Each electric utility is responsible for developing an IRP that meets the energy needs of its customers. The IRP Framework requires each electric utility to develop a long-range, twenty (20)-year plan and a medium-range five (5)-year action plan to be submitted on a three (3)-year planning cycle for the Commission's review and approval. The IRP process is a vehicle for the Commission, the electric utilities, energy stakeholders, and the public to understand and influence the planning process involved in identifying and evaluating the mix of demand-side and supply-side energy resources needed to meet near and long-term energy needs in an efficient and reliable manner at the lowest reasonable cost.

"IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Public Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.

"Parallel Plan" means the generating unit plan (comprised of one or multiple generation resources) that is pursued by the electric utility in parallel with a third-party project selected in an RFP until there is reasonable assurance that the third-party project will reach commercial operation, or until such action can no longer be justified to be reasonable. The utility's Parallel Plan unit(s) may be different from that proposed in the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"PPA" means a power purchase agreement or contract to purchase firm capacity, energy, or both, from an electric utility, pursuant to the terms of this Framework.

"PURPA" means the Federal Public Utility Regulatory Policies Act of 1978, as amended.

"QF" means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 Code of Federal Regulations §§ 292.201 – 292.211. See also 18 Code of Federal Regulations § 291.201(b)(1) (definition of "qualifying facility").

"RFP" means a written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its affiliate, to supply a future generation resource or a block of generation resources to the utility pursuant to the competitive bidding process.

## **II. CONTEXT FOR COMPETITIVE BIDDING**

### **A. USE OF COMPETITIVE BIDDING**

1. This Framework applies to electric utilities regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.
2. A determination shall be made by the Commission in a utility's IRP proceeding as to whether a competitive bidding process shall be used to acquire a future generation resource or a block of generation resources.
3. Competitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in a utility's IRP. The basis for such a finding shall be explained by the utility in its IRP, and the determination shall be made by

the Commission in its review of the utility's IRP. See Part II.C, below. The following conditions and possible exceptions apply:

- a. Competitive bidding will benefit Hawaii when it: (i) facilitates an electric utility's acquisition of supply-side resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new generating resources that are overall lower in cost or better performing than the utility could otherwise achieve; (iii) does not negatively impact the reliability or unduly encumber the operation or maintenance of Hawaii's unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances; and (v) is consistent with IRP objectives.
- b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.
- c. Other circumstances that could qualify for a waiver include: (i) the expansion or repowering of existing utility generating units; (ii) the acquisition of near-term power supplies for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; and (iv) the acquisition of power supplies needed to respond to an emergency situation.
- d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

- e. This Framework does not apply to: (i) the three utility projects currently being developed: Hawaiian Electric Company, Inc.'s Campbell Industrial Park CT-1, Hawaii Electric Light Company, Inc.'s Keahole ST-7, and Maui Electric Company, Ltd.'s Maalaea M-18; (ii) offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; and (iii) offers to sell firm energy and/or capacity by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted, or that resulted from negotiations with respect to offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; provided that negotiations with respect to such firm energy and/or capacity offers are concluded no later than December 31, 2007.
- f. This Framework also does not apply to: (i) generating units with a net output available to the utility of 1% or less of a utility's total firm capacity, including that of independent power producers, or with a net output of 5 MW or less, whichever is lower (for systems that cover more than one island (i.e., Maui Electric Company, Ltd.'s system, which has generation on Maui, Molokai and Lanai), the system firm capacity will be determined on a consolidated basis); (ii) distributed generating units at substations and other sites installed by the utility on a temporary basis to help address reserve margin shortfalls; (iii) customer-sited, utility-owned distributed generating units that have been approved by the Commission in accordance with the requirements of Decision and Order No. 22248, issued January 27, 2006, as clarified by Order No. 22375, issued April 6, 2006 in Docket No. 03-0371; and (iv) renewable energy or new technology generation projects under 1 MW installed for "proof-of-concept" or demonstration purposes.
- g. This Framework also does not apply to qualified facilities and non-fossil fuel producers with respect to: (i) power purchase agreements for as-available energy; provided that an electric utility is not required to offer a term for such power purchase agreements that exceeds five years if it has a bidding program that includes as-available energy facilities; (ii) power purchase agreements for facilities with a net output available to the utility of 2 MW or less; (iii) power purchase agreement extensions for three years or less on substantially the same terms and conditions as the existing power purchase agreements and/or on more favorable terms and conditions; (iv) power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air

permit modification; and (v) renegotiations of power purchase agreements in anticipation of their expiration, approved by the Commission.

- h. When a competitive bidding process will be used to acquire a future generation resource or a block of generation resources, the generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to reasonably address system integration and safety concerns.

4. The procedure for seeking a waiver is as follows:

- a. Applications for waivers, and transition to competitive bidding requirements for new generation projects.
  - (i) For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric utility shall file an application for waiver with the Commission, as soon as practicable, consistent with Part II.A.4.a(iv), below.
  - (ii) For proposed generation projects included in, or consistent with, the IRP filed for Commission approval in In re Hawaiian Elec. Co., Inc., Docket 03-0253, the electric utility shall file any waiver request no later than sixty (60) days following a Commission order approving the IRP.
  - (iii) For all proposed generation projects included in, or consistent with, IRPs that have not yet been filed with the Commission for approval as of the effective date of this Framework, any waiver request shall accompany the filing of the proposed IRP for the Commission's approval.
  - (iv) An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

- b. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.
5. Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new generation projects through competitive bidding, the Commission will exempt such entity from this Framework.

## **B. SCOPE OF COMPETITIVE BIDDING**

1. An electric utility's IRP shall specify the proposed scope of the RFP for any specific generation resource or block of generation resources that the IRP states will be subject to competitive bidding.
2. Competitive bidding shall enable the comparison of a wide range of supply-side options, including PPAs, utility self-build options, turnkey arrangements (i.e., build and transfer options), and tolling arrangements where practical.
3. Each electric utility shall take steps to provide notice of its RFPs, and to encourage participation from a full range of prospective bidders. PURPA qualifying facilities, IPPs, the host utility, and its affiliates, and other utilities shall be eligible to participate in any supply-side RFP.
4. Competitive bidding processes may vary by resource type, provided those processes are consistent with this Framework. For instance, solicitation processes for distributed generation facilities may be different from those for central station generating supplies. An electric utility may establish a separate procurement process (such as a "set aside" or separate RFP process) to acquire as-available or firm capacity from renewable generating facilities.
5. RFP processes shall be flexible, and shall not include unreasonable restrictions on sizes and types of projects considered, taking into account the appropriate sizes and types identified in the IRP process.

## **C. RELATIONSHIP TO INTEGRATED RESOURCE PLANNING**

1. The Commission's IRP Framework applicable to each electric utility shall continue to be used to set the strategic direction of resource planning by the electric utilities. In order for competitive bidding to be effectively and efficiently integrated with a utility's IRP, stakeholders must work

cooperatively to identify and adhere to appropriate timelines, which may need to be expedited.

2. This Framework is intended to complement the Commission's IRP Framework.
3. A determination shall be made by the Commission in an IRP proceeding as to whether a competitive bidding process shall be used to acquire a generation resource or a block of generation resources that is included in the IRP. Actual competitive bidding for IRP-designated resources will normally occur after the IRP is approved, through an RFP, which is consistent with the IRP approved by the Commission. However, during the transition into competitive bidding processes for new generation under this Framework, if the IRP in effect was approved prior to the effective date of this Framework, a utility shall initiate competitive bidding (or request a waiver under Part II.A.4) as may be required by this Framework. As required by the IRP Framework, such projects must be identified in or consistent with the IRP in effect at the time.
4. Integration of competitive bidding into IRP. The general approach to integration has four parts, in sequence:
  - a. The electric utility conducts an IRP process, culminating in an IRP that identifies a preferred resource plan (including capacity, energy, timing, technologies, and other preferred attributes). This IRP shall identify those resources for which the utility proposes to hold competitive bidding, and those resources for which the utility seeks a waiver from competitive bidding, and shall include an explanation of the facts supporting a waiver, based on the waiver criteria set forth in Part II.A.3, above.
  - b. The Commission approves, modifies, or rejects the IRP, including any requests for waiver, under the IRP Framework and this Framework.
  - c. The electric utility conducts a competitive bidding process, consistent with the IRP; such process shall include the advance filing of a draft RFP with the Commission, which shall be consistent with the IRP.
  - d. The electric utility selects a winner from the bidders. (But see Part II.C.6, below, concerning the process when there are no bidders worth choosing.).
5. An evaluation of bids in a competitive bidding process may reveal desirable projects that were not included in an Approved IRP.



These projects may be selected if it can be demonstrated that the project is consistent with an Approved IRP and that such action is expected to benefit the utility and its ratepayers.

6. An evaluation of bids in a competitive bidding process may reveal that the acquisition of any of the resources in the bid will not assist the utility in fulfilling its obligations to its ratepayers. In such a case, the utility may determine not to acquire such resources and shall notify the Commission accordingly. Such notification shall include: (a) an explanation of why the competitive bidding process failed to produce a viable project; and (b) a description of what actions the electric utility intends to take to replace the resource sought through the unsuccessful competitive bidding process.

#### **D. MITIGATION OF RISKS ASSOCIATED WITH COMPETITIVE BIDDING**

1. To carry out its competitive bidding obligations consistently with its resource sufficiency obligations, the electric utility must conduct, or consider conducting, three types of activities: self-build, parallel planning, and contingency planning. The utility's self-build obligation is addressed in Parts VI.A.1 and VI.C, below. The electric utility's parallel planning and contingency planning activities are discussed in Parts II.D.2 to II.D.4, below.
2. In consideration of the isolated nature of the island utility systems, the utility may use a Parallel Plan option to mitigate the risk that an IPP's option may fail. Under this Parallel Plan option, the utility may continue to proceed with its Parallel Plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be justified to be reasonable. The electric utility shall use prudent electric utility practices to determine the nature, amount, and timing of the parallel planning activities, and take into account (without limitation) the cost of parallel planning and the probability of third-party failure. The electric utility's Parallel Plan unit(s) may differ from that proposed in the electric utility's bid. For each project that is subject to competitive bidding, the electric utility shall submit a report on the cost of parallel planning upon the Commission's request.
3. The electric utility may require bidders (subject to the Commission's approval with other elements of a proposed RFP) to offer the utility the option to purchase the project under certain conditions or in the event of default by the seller (i.e., the bidder), subject to commercially reasonable payment terms.

4. The utility's Contingency Plan need not be the resource identified as the preferred resource in its Approved IRP Plan.

### **III. ROLES IN COMPETITIVE BIDDING**

#### **A. ELECTRIC UTILITY**

1. The role of the host electric utility in the competitive bidding process shall include:
  - a. Designing the solicitation process, establishing evaluation criteria consistent with its overall IRP objectives, and specifying timelines;
  - b. Designing the RFP documents and proposed forms of PPAs and other contracts;
  - c. Implementing and managing the RFP process, including communications with bidders;
  - d. Evaluating the bids received;
  - e. Selecting the bids for negotiations based on established criteria;
  - f. Negotiating contracts with selected bidders;
  - g. Determining, where and when feasible, the interconnection facilities and transmission upgrades necessary to accommodate new generation;
  - h. Competing in the solicitation process with a self-build option, unless a waiver is granted; and
  - i. Providing the Independent Observer with all requested information.
2. In designing each competitive bidding process, each electric utility shall:
  - (a) take prudent steps to obtain information on the experiences of similarly-situated utilities and utilities that have conducted competitive bidding processes to address similar needs; and
  - (b) take prudent steps to take full advantage of available industry sources of related information.
3. Access to Utility Sites. The utility shall consider, on a case-by-case basis before an RFP is issued, offering one or several utility-owned or controlled sites to bidders in each competitive bidding process. The utility shall consider such factors as:

- a. The anticipated specific non-technical terms of potential proposals. An example of one factor that will need to be examined is whether benefits will be expected from a "turnkey" project that the utility will or may eventually own and operate.
- b. The feasibility of the installation. Examples of the factors that may need to be examined in order to evaluate the feasibility of the installation may include, but are not be limited to the following:
  - i. Specific physical and technical parameters of anticipated non-utility installations, such as the technology that may be installed, space and land area requirements, topographic, slope and geotechnical constraints, fuel logistics, water requirements, number of site personnel, access requirements, waste and emissions from operations, noise profile, electrical interconnection requirements, and physical profile; and
  - ii. How the operation, maintenance, and construction of each installation will affect factors such as security at the site, land ownership issues, land use and permit considerations (e.g., compatibility of the proposed development with present and planned land uses), existing and new environmental permits and licenses, impact on operations and maintenance of existing and future facilities, impact to the surrounding community, change in zoning permit conditions, and safety of utility personnel.
- c. The utility's anticipated future use of the site. Examples of why it may be beneficial for the utility to maintain site control may include, but are not limited to the following: (i) to ensure that power generation resources can be constructed to meet system reliability requirements; (ii) to retain flexibility for the utility to perform crucial parallel planning for a utility owned option to back-up the unfulfilled commitments, if any, of third-party developers of generation; and (iii) to retain the flexibility for the utility to acquire the unique efficiency gains of combined-cycle conversions and repowering projects of existing utility simple-cycle combustion turbines and steam fired generating facilities, respectively.
- d. The effect on competitive forces of denying bidders the ability to use the site, taking into account whether the unavailability of adequate sites for non-utility bidders gives the electric utility a competitive advantage.

- e. Where the utility has chosen not to offer a site to a third-party, the electric utility shall present its reasons, specific to the project and sites at issue, in writing to the Independent Observer and the Commission.
4. The utility shall submit to the Commission for review and approval (subject to modification if necessary), a Code of Conduct described in Part IV.H.9.c, below, prior to the commencement of any competitive bid process under this Framework.

**B. HAWAII PUBLIC UTILITIES COMMISSION**

1. The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) projects selected through competitive bidding processes are consistent with the utility's Approved IRP; (c) the electric utility's actions represent prudent practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.
2. The Commission will review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP.
3. The Commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V, below.
4. The Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.8 shall not apply. In reviewing such contracts, the Commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.
5. If the utility identifies its self-build or turnkey project as superior to bid proposals, the utility shall seek Commission approval in keeping with established CIP Approval Requirements.
6. The Commission shall review and approve (and modify if necessary), the electric utility's tariffs for interconnection and transmission upgrades required by Part IV.I of this Framework.

7. The Commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V.
8. Timely Commission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process. Accordingly, to expedite Commission action in this competitive bidding process, whenever Commission review, approval, consent, or action is required under this Framework, the Commission may do so in an informal expedited process. The Commission hereby authorizes its Chairman, or his designee (which designee, may be another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant), in consultation with other Commissioners, Commission staff, and the Independent Observer, to take any such action on behalf of the Commission.

### **C. INDEPENDENT OBSERVER**

1. An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines. An Independent Observer will monitor the competitive bidding process and will report on the progress and results to the Commission, sufficiently early so that the Commission is able to address any defects and allow competitive bidding to occur in time to meet capacity needs. Any interaction between a utility and its affiliate during the course of a solicitation process, beginning with the preparation of the RFP, shall be closely monitored by the Independent Observer. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP and as may be required by the Commission.
2. Independent Observer obligations. The Independent Observer will have duties and obligations in two areas: Advisory and Monitoring.
  - a. Advisory. The Independent Observer shall:
    - (i) Certify to the Commission that at each of the following steps, the electric utility's judgments created no unearned advantage for the electric utility or any affiliate:
      - (1) Pre-qualification criteria;
      - (2) RFP;
      - (3) Model PPA to be attached to the RFP;
      - (4) Selection criteria;
      - (5) Evaluation of bids; and

- (6) Final decision to purchase power or proceed with self-build option.
  - (ii) Advise the electric utility on its decision-making during, and with respect to, each of the electric utility's actions listed in the preceding item;
  - (iii) Report immediately to the electric utility's executive in charge of ensuring compliance with this Framework, and the Commission, any deviations from the Framework or violations of any procurement rules;
  - (iv) After the electric utility's procurement selection is completed, provide the Commission with:
    - (1) An overall assessment of whether the goals of the RFP were achieved, such goals to include without limitation the attraction of a sufficient number of bidders and the elimination of actual or perceived utility favoritism for its own or an affiliate's project; and
    - (2) Recommendations for improving future competitive bidding processes.
  - (v) Be available to the Commission as a witness if required to evaluate a complaint filed against an electric utility for non-compliance with this Framework, or if required in a future rate case if questions of prudence arise.
- b. Monitoring. The Independent Observer shall:
- (i) Monitor all steps in a competitive bidding process, beginning with the preparation of the RFP, or at such earlier time as determined by the Commission;
  - (ii) Monitor communications (and communications protocols) with bidders;
  - (iii) Monitor adherence to Codes of Conduct;
  - (iv) Monitor contract negotiations with bidders;
  - (v) Monitor all interactions between the electric utility and its affiliate, during all events affecting a solicitation process, if the affiliate may be a bidder; and

- (vi) Report to the Commission on monitoring results during each stage of the competitive process, sufficiently early so that the Commission can correct defects or eliminate uncertainties without endangering project milestones.
- 3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.
- 4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.
- 5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:
  - a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;
  - b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;
  - c. Have the necessary experience and familiarity with utility modeling capability, transmission system planning, operational characteristics, and other factors that affect project selection;
  - d. Have a working knowledge of common PPA terms and conditions, and the PPA negotiations process;
  - e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and
  - f. Be able to demonstrate impartiality.
- 6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates. The electric utility's contract with the Independent Observer shall be acceptable to the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission,

including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding, and may defer the costs prudently incurred for the Independent Observer (i.e., deferred accounting).

7. As part of the RFP design process, the utility shall develop procedures to be included in the RFP by which any participant in the competitive bidding process may present to the Commission, for review and resolution, positions that differ from those of the Independent Observer (i.e., in the event the Independent Observer makes any representations to the Commission upon which the participant does not agree).

#### **IV. THE REQUEST FOR PROPOSALS PROCESS**

##### **A. GENERAL**

1. Competitive bidding shall be structured and implemented in a way that facilitates an electric utility's acquisition of supply-side resources identified in a utility's IRP in a cost-effective and systematic manner, consistent with state energy policy. All costs and benefits incurred or received by the utility and its customers shall be taken into account in the bid evaluation and selection process.
2. Competitive bidding shall be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed resources and allowing the utility to adjust to changes in circumstances.
  - a. The implementation of competitive bidding cannot be allowed to negatively impact reliability of the electric utility system.
  - b. The generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to minimize system integration concerns.



3. The competitive bidding process shall ensure that proposals and bidders are judged on the merits, without being unduly burdensome to the electric utilities and the Commission.
  - a. The competitive bidding process shall include an RFP and supporting documentation by which the utility sets forth the requirements to be fulfilled by bidders and describes the process by which it will: (i) conduct its solicitation; (ii) obtain consistent and accurate information on which to evaluate bids; (iii) implement a consistent and equitable evaluation process; and (iv) systematically document its determinations. The RFP shall also describe the role of the Independent Observer and bidders' opportunities for challenges and for dispute resolution.
  - b. When a utility advances its own project proposal (i.e., in competition with those offered by bidders) or accepts a bid from an affiliate, the utility shall take all reasonable steps, including any steps required by the Commission, to mitigate concerns over an unfair or unearned competitive advantage that may exist or reasonably be perceived by other bidders or stakeholders.
4. If an IPP, turnkey, or affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result. Proposed forms of PPAs and other contracts that may result from the RFP process (e.g., PPA for firm capacity, PPA for as-available energy, turnkey contract, etc.) shall be included with each RFP. The RFP shall specify whether any opportunity exists to propose or negotiate changes to the proposed form of PPA.

**B. DESIGN OF THE COMPETITIVE BIDDING SOLICITATION PROCESS**

1. The competitive bidding solicitation process shall include the following:
  - a. Design of the RFP and supporting documents;
  - b. Issuance of the RFP;
  - c. Development and submission of proposals by bidders;
  - d. A "multi-stage evaluation process" to reduce bids down to a short list or "award group" (i.e., a process that includes, without limitation: (i) receipt of the proposals; (ii) completeness check; (iii) threshold or minimum requirements evaluation; (iv) initial evaluation including price screen/non-price assessment; (v) selection of a short list; (vi) detailed evaluation or portfolio

- development; and (vii) selection of award group for contract negotiation);
- e. Contract negotiations (when a third-party bid is selected); and
  - f. Commission approval of any resulting contract.
2. The RFP shall identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, and criteria used for the evaluation. For example, if the utility values dispatchability or operating flexibility, the RFP shall: (a) request that a bidder offer such an option; and (b) explain how the utility will evaluate the impacts of dispatchability or operational flexibility in the bid evaluation process.
  3. The RFP (including the response package, proposed forms of PPAs and other contracts) shall describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the general bid evaluation and selection criteria, the risk factors important to the utility, and, to the extent practicable, the schedule for all steps in the bidding process.
  4. The utility may charge bidders a reasonable fee, to be reviewed by the Independent Observer, for participating in the RFP process.
  5. Other Content of RFP. The RFP shall also contain:
    - a. Information on the relationship between an electric utility and its affiliate, and the circumstances under which an electric utility's affiliate may participate;
    - b. An explanation of the procedures by which any person may present to the Commission positions that differ from those of the Independent Observer; and
    - c. A statement that if disputes arise under this Framework, the dispute resolution process established in this Framework will control.
  6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:
    - a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;

- b. The utility holds a technical conference to discuss the draft RFP with interested parties (which may include potential bidders);
  - c. Interested parties submit comments on the draft RFP to the utility and the Commission;
  - d. The utility determines whether and how to incorporate recommendations from interested parties in the draft RFP;
  - e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:
    - (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.
    - (ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer's comments and recommendations.
7. A pre-qualification requirement is a requirement that a bidder must satisfy to be eligible to bid. A pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs. Any pre-qualification requirements shall apply equally to independent bidders, the electric utility's self-build bid, and the bid of any utility's affiliate.
8. As part of the design process, the utility shall develop and specify the type and form of threshold criteria that will apply to bidders, including the utility's self-build proposals. Examples of potential threshold criteria include requirements that bidders have site control, maintain a specified credit rating, and demonstrate that their proposed technologies are mature.
9. The design process shall address credit requirements and security provisions, which apply to: (a) the qualification of bidders; and (b) bid evaluation processes.
10. The utility shall have the discretion to modify the RFP or solicit additional bids from bidders after reviewing the initial bids, provided that such discretion is clearly identified in the RFP and any modification is reviewed by the Independent Observer and submitted to the Commission along with the Independent Observer's comments. The electric utility may

issue the modified RFP thirty (30) days after the Commission has received these materials, unless the Commission directs otherwise.

11. All involved parties shall plan, collaborate, and endeavor to complete the final RFP within ninety (90) days from the date the electric utility submits the draft RFP to the Commission.

#### **C. FORMS OF CONTRACTS**

1. The RFP shall include proposed forms of PPAs and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances. The terms and conditions of the contracts shall be specified to the extent practical, so that bidders are aware of, among other things, performance requirements, pricing options, key provisions that affect risk allocation (including those identified in sub-paragraph 2 below), and provisions that may be subject to negotiation. Where contract provisions are not finalized or provided in advance of RFP issuance (e.g., because certain contract provisions must reflect features of the winning bidder's proposal such as technology or location), the RFP shall so indicate.
2. The provisions of a proposed contract shall address matters such as the following (unless inapplicable): (a) reasonable credit assurance and security requirements appropriate to an island system that reasonably compensates the utility and its customers if the project sponsor fails to perform; (b) contract buyout and project acquisition provisions; (c) in-service date delay and acceleration provisions; (d) liquidated damage provisions that reflect risks to the utility and its customers; and (e) contractual terms to allow for turnkey options.
3. The proposed contracts may allow the utility the option to request conversion of the plant to an alternate fuel if conditions warrant, with appropriate modifications to the contract to account for the bidder/seller's conversion costs and to assign the benefits of any lower fuel costs.
4. The RFP shall specify which terms in the proposed forms of contract are subject to negotiation or alternative proposals, or from which a bidder may request exceptions. For these terms, bidders may submit alternative language as part of their bids, provided that any such variation is not inconsistent with any IRP which described the resource at issue.

#### **D. ISSUANCE OF THE RFP AND DEVELOPMENT OF PROPOSALS**

1. Each electric utility shall take steps to provide notice of its RFPs to, and encourage participation from, the full community of prospective bidders.

2. Bidders may be required to submit a "notice of intent to bid" to the electric utility.
3. The electric utility shall develop and implement a formal process to respond to bidders' questions.
4. The electric utility may conduct a bidders' conference.
5. The electric utility shall provide bidders with access to information through a website where it can post documents and information.
6. The process shall require all third-party bids to be submitted by the deadline specified in the RFP, except that the utility's self-bid shall be submitted one day in advance.
7. Bids may be deemed non-conforming if they do not meet or otherwise provide all of the information requested in an RFP. At the utility's discretion, in consultation with the Independent Observer, proposals that are non-conforming may be given additional time to remedy their non-conformity. The utility, in consultation with the Independent Observer, may decline to consider any bid that is non-conforming.

**E. BID EVALUATION / SELECTION CRITERIA**

1. The utility, monitored by the Independent Observer, shall compare bids received in response to an RFP to one another and to the utility's self-build project (or the generic resource identified in the IRP, if no self-build project proposal is being advanced).
2. The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process may vary from one RFP to another (depending, for example, on the RFP scope and specific needs of the utility).
3. The bid evaluation process shall include consideration of differences between bidders with respect to proposed contract provisions, and differences in anticipated compliance with such provisions, including but not limited to provisions intended to ensure:
  - a. Generating unit and electric system reliability;
  - b. Appropriate risk allocations;
  - c. Counter-party creditworthiness; and

- d. Bidder qualification.
- 4. Proposals shall be evaluated based on a consistent and reasonable set of economic and fuel price assumptions, to be specified in the RFP.
- 5. Both price and non-price evaluation criteria (e.g., externalities and societal impacts, and preferred attributes consistent with the Approved IRP), shall be described in the RFP, and shall be considered in evaluating proposals.
- 6. In evaluating competing proposals, all relevant incremental costs to the electric utility and its ratepayers shall be considered (e.g., these may include transmission costs and system impacts, and the reasonably foreseeable balance sheet and related financial impacts of competing proposals).
- 7. The amount of purchased power that a utility already has on its system, in terms of reliability and dispatchability, and the impacts that increasing the amount of purchased power may have, in terms of reliability and dispatchability, shall be taken into account in the bid evaluation. The RFP shall specify the methodology for considering this effect. Such methodology shall not cause double-counting with the financial effects discussed in sub-paragraph 6, above, and sub-paragraph 8, below.
- 8. The impact of purchased power costs on the utility's balance sheets, and the potential for resulting utility credit downgrades (and higher borrowing costs), may be accounted for in the bid evaluation. Where the utility has to restructure its balance sheet and increase the percentage of more costly equity financing in order to offset the impacts of purchasing power on its balance sheet, this rebalancing cost shall also be taken into account in evaluating the total cost of a proposal for a new generating unit if IPP-owned, and it may be a requirement that bidders provide all information necessary to complete these evaluations. The RFP shall describe the methodology for considering financial effects.
- 9. The type and form of non-price threshold criteria shall be identified in the RFP. Such threshold criteria may include, among other criteria, the following:
  - a. Project development feasibility criteria (e.g., siting status, ability to finance, environmental permitting status, commercial operation date certainty, engineering design, fuel supply status, bidder experience, and reliability of the technology);
  - b. Project operational viability criteria (e.g., operation and maintenance plan, financial strength, environmental compliance, and environmental impact);

- c. Operating profile criteria (e.g., dispatching and scheduling, coordination of maintenance, operating profile such as ramp rates, and quick start capability); and
  - d. Flexibility criteria (e.g., in-service date flexibility, expansion capability, contract term, contract buy-out options, fuel flexibility, and stability of the price proposal).
10. The weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

#### **F. EVALUATION OF THE BIDS**

- 1. The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate.
- 2. The electric utility shall document the evaluation and selection process for each RFP process, for review by the Commission in approving the outcome of the process (i.e., in approving a PPA or a utility self-build proposal).
- 3. A detailed system evaluation process, which uses models and methodologies that are consistent with those used in the utility's IRP processes, may be used to evaluate bids. In anticipation of such evaluation processes, the RFP shall specify the data required of bidders.

#### **G. CONTRACT NEGOTIATIONS**

- 1. There may be opportunities to negotiate price and non-price terms to enhance the value of the contract for the bidder, the utility, and its ratepayers. Examples of such provisions that may be open for negotiation include fuel supply arrangements and project operating characteristics. Negotiations shall be monitored by the Independent Observer.
- 2. Contract interaction with affiliates shall be permitted, provided that such interaction is closely monitored by an Independent Observer.

3. The electric utility may use competitive negotiations among short-listed bidders.

## **H. FAIRNESS PROVISIONS AND TRANSPARENCY**

1. The competitive bidding process shall judge all bidders on the merits only.
2. During the bidding process, the electric utility shall treat all bidders, including any utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
3. A "closed bidding process" is generally anticipated, rather than an "open bidding process." Under one type of closed bidding process, bidders are informed through the RFP of: (a) the process that will be used to evaluate and select proposals; (b) the general bid evaluation and selection criteria; and (c) the proposed forms of PPAs and other contracts (e.g., turnkey contract). However, bidders shall not have access to the utility's bid evaluation models, the detailed criteria used to evaluate bids, or information contained in proposals submitted by other bidders. (But see sub-paragraph 4(c), below, regarding a losing bidder's access to the model.)
4. If the electric utility chooses to use a closed process:
  - a. The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to understand the model and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process; and
  - b. After the utility has selected a bidder, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder's specific proposal if requested by the losing bidder within seven (7) days of the selection.
5. The host electric utility shall be allowed to consider its own self-bid proposals in response to generation needs identified in its RFP.
6. Procedures shall be developed by the utility prior to the initiation of the bidding process to define the roles of the members of its various project teams, to outline communications processes with bidders, and to address confidentiality of the information provided by bidders. Such procedures shall be submitted in advance to the Independent Observer and the Commission for comment.



7. If the IRP indicates that a competitive bidding process will be used to acquire a generation resource or a block of generation resources, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.
8. If proposed, utility self-build facilities or other utility-owned facilities (e.g., turnkey facilities), or facilities owned by an affiliate of the host utility, are to be compared against IPP proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an affiliate, the affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of affiliate bids, and self-build or other utility-owned facilities; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned facilities, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate affiliate bids and self-build or other utility-owned facilities, and the evaluation of affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.

9. Where the electric utility is responding to its own RFP, or is accepting bids submitted by its affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.
  - a. The following tasks shall be completed as a matter of course (i.e., regardless of whether the utility or its affiliate is seeking to advance a resource proposal), including: (i) the utility shall develop all bid evaluation criteria, bid selection guidelines, and the quantitative evaluation models and other information necessary for evaluation of bids prior to issuance of the RFP; (ii) the utility shall establish a website for disseminating information to all bidders at the same time; and (iii) the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process.
  - b. The following tasks shall be completed whenever the utility or its affiliate is seeking to advance a resource proposal, including: (i) the utility shall submit its self-build option to the Commission one day in advance of receipt of other bids, and provide substantially the same information in its proposal as other bidders; (ii) the utility shall follow the Code of Conduct; and (iii) the utility shall implement appropriate confidentiality agreements prior to the issuance of the RFP to guide the roles and responsibilities of utility personnel.
  - c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:
    - (i) Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option;
    - (ii) During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;

- (iii) Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
  - d. A company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.
  - e. Further steps may be considered, as appropriate, or ordered by the Commission.
10. Where the utility seeks to advance its proposed facilities (i.e., over those of other developers who may submit bids in its RFP), its proposal must satisfy all the criteria applicable to non-utility bidders, including but not limited to providing all information required by the RFP, and being capable of implementation.
11. Bids submitted by affiliates shall be held to the same contractual and other standards as projects advanced by other bidders.

#### **I. TRANSMISSION INTERCONNECTION AND UPGRADES**

- 1. A winning bidder has the right to interconnect its generation to the electric utility's transmission system, and to have that transmission upgraded as necessary to accommodate the output of its generation.
- 2. With respect to procedures and methodologies for:
  - a. Designing interconnections;
  - b. Allocating the cost of interconnections;
  - c. Scheduling and carrying out the physical implementation of interconnections;
  - d. Identifying the need for transmission upgrades;
  - e. Allocating the cost of transmission upgrades; and
  - f. Scheduling and carrying out the physical implementation of transmission upgrades;

the electric utility shall treat all bidders, including its own bid and that of any affiliate, in a comparable manner.

3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission upgrade costs associated with project locations under consideration by the bidder.
4. In a compliance filing to be made within ninety days after issuance of this Framework, the electric utility shall submit a proposed tariff containing procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders including any electric utility or electric utility affiliate bid. This submission shall contain at least the following elements:
  - a. A formal queuing process that ensures nondiscriminatory, auditable treatment of all requests for interconnection, upgrades and studies thereof;
  - b. A means, if practical, of minimizing the cost of studies by bundling different requests into a single study;
  - c. A methodology for allocating the costs of interconnection and transmission upgrades between the electric utility and the generator; and
  - d. A process for obtaining information on current capacity, operations, maintenance and expansion plans relating to the transmission and distribution systems.
5. To ensure comparable treatment, the Independent Observer shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

## **V. DISPUTE RESOLUTION PROCESS**

The Commission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue. The Commission will use an informal expedited process to resolve the dispute within thirty (30) days, as described in Part III.B.8. There shall be no right to hearing or appeal from this informal expedited dispute resolution process. The Commission encourages affected parties to seek to work cooperatively to resolve any dispute or pending issue, perhaps with the assistance of an Independent Observer, who may offer to mediate but who has no decision-making authority. The utility and Independent Observer shall conduct informational meetings with the Commission and

Consumer Advocate to keep each apprised of issues that arise between or among the parties.

## **VI. PARTICIPATION BY THE HOST UTILITY**

- A. Where the electric utility is addressing a need for firm capacity in order to address system reliability issues or concerns:
  - 1. In general, the utility shall develop a project proposal that is responsive to the resource need identified in the RFP. The proposal shall represent the utility's best ("self-build" or "utility-owned") response to that need in terms of foreseeable costs and other project characteristics.
  - 2. If the utility opts not to advance its own project (i.e., over those of other developers), the utility shall request and obtain the Commission's approval. In making this request, the utility:
    - a. Shall demonstrate why relying on the market to provide the needed resource is prudent, and such demonstration shall include evidence of the number of viable sellers the utility expects will compete;
    - b. Shall develop a Contingency Plan to respond in a reasonable timeframe if the competitive bidding process unexpectedly fails to produce a viable project proposal; and
    - c. If necessary, shall identify a Parallel Plan that is capable of being implemented, to the extent feasible, after an appropriate amount of planning, which may or may not be the supply-side resource or resources in the Approved IRP.
- B. Where the RFP process has as its focus something other than a reliability-based need, the utility may choose (or decline) to advance its own project proposal either in the form of a self-build or utility-owned project.
- C. If the RFP process results in the selection of non-utility (or third-party) projects to meet a system reliability need or statutory requirement, the utility shall develop and periodically update its Contingency Plan and, if necessary, its Parallel Plan to address the risk that the third-party projects may be delayed or not completed. When submitting the RFP to the Commission, the electric utility shall separately submit, to the extent practical, a description of such activities and a schedule for carrying them out. Such description shall be updated as appropriate.
  - 1. The plans may include the identification of milestones for such projects, and possible steps to be taken if the milestones are not met.

2. Pursuant to the plans, it may be appropriate for the utility to proceed to develop a self-build or utility-owned project or projects until such action can no longer be justified as reasonable. The self-build or utility-owned project(s) may differ from the project(s) advanced by the utility in the RFP process, or the resource(s) identified in its Approved IRP Plan.
  3. The contracts developed for the RFP process to acquire third-party resources shall include commercially reasonable provisions that address delays or non-completion of third-party projects, such as provisions that identify milestones for the projects, seller (i.e., bidder) obligations, and utility remedies if the milestones are not met, and may include provisions to provide the utility with the option to purchase the project under certain circumstances or events of default by the seller (i.e., the bidder).
- D. A utility shall not advance mutually exclusive projects in response to an identified need.

## **VII. RATEMAKING**

- A. The costs that an electric utility reasonably and prudently incurs in designing and administering its competitive bidding processes are recoverable through rates to the extent reasonable and prudent.
- B. The costs that an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and Contingency Plans are recoverable through the utility's rates, to the extent reasonable and prudent, as part of the cost of providing reliable service to customers
- C. The reasonable and prudent capital costs that are part of an electric utility's Parallel Plans and Contingency Plans shall be accounted for similar to costs for planning other capital projects (provided that such accounting treatment shall not be determinative of ratemaking treatment):
  1. Such costs would be accumulated as construction work in progress, and carrying costs would accrue on such costs. If the Parallel Plans or Contingency Plans, as implemented, result in the addition of planned resources to the utility system, then the costs incurred and accrued carrying charges would be capitalized as part of the installed resources (i.e., recorded to plant-in-service) and added to rate base. The costs would be depreciated over the life of the resource addition.
  2. If implementation of the Parallel Plans or Contingency Plans is terminated before the resources identified in such plans are placed into service, the costs incurred and accrued carrying charges included in construction work in progress would be transferred to a miscellaneous deferred debit account

and the balance would be amortized to expense over five years (or a reasonable period determined by the Commission), beginning when the base plan resource is placed into service. The amortization expense would be included in the utility's revenue requirement when there is a general rate case. Under appropriate circumstances, the Commission may allow additional carrying costs to accrue on the unamortized miscellaneous deferred balance.

- D. The regulatory treatment of utility-owned or self-build facilities will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the capital or running costs actually incurred, and recovered from ratepayers, over the plant's lifetime, will vary from the levels assumed in the utility's bid. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent rate proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost.

#### **VIII. QUALIFYING FACILITIES**

- A. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and energy from a QF at avoided cost upon reasonable terms and conditions approved by the Commission.
- B. For any resource to which the competitive bidding requirement does apply, the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-15(c) (1998) for the utility to negotiate with a QF pursuant to the applicable provisions of Hawaii Administrative Rules § 6-74-15(c) (1998), and upon approval of the commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.
  - 1. If a non-QF is the winning bidder:
    - a. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.
    - b. If a non-QF winner does not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The commission's determination of avoided

cost will be bounded by the price level established by the winning non-QF.

2. Where the winning bidder is the utility's self-build option, a QF will not have a PURPA right to supply the resource provided by the utility's self-build option.
3. If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price, unless the price is modified in the contract negotiations that are part of the bidding process.



## ATTACHMENT B

### CONSULTANT'S PERSONNEL AND HOURLY RATES

Consultants	Hourly Rate
Harold T. Judd	\$325
Alan Kessler	\$325
Marcus Jackson	\$275
John W. Noyes	\$250
Philip B. Layfield	\$250
John B. Hart	\$175
Assistants	\$85

Consultant shall have the right to supplement or replace the foregoing personnel with the written approval of Company and without an amendment to the Contract; provided, that such personnel have the requisite expertise and experience for the work to be performed and the hourly rates are reasonable and not in excess of the rates set forth above for comparable work.

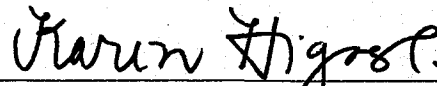
Consultant shall be entitled to compensation for all reasonable, actual out-of-pocket expenses incurred in connection with the Work, including but not limited to reasonable airfare (coach class or equivalent), rental car and other transportation costs, lodging, parking and tolls while on business travel, meals while on business travel, telephone (except for telephone calls not specially billed), delivery charges, copying and printing by third parties, and other necessary expenses. Use of an automobile other than a rental automobile shall be reimbursed at the rate approved by the Internal Revenue Service.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23872 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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EDWARD L. REINHARDT  
PRESIDENT  
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Kahului, MAUI, HI 96733-6898

  
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Karen Higashi

DATED: DEC - 6 2007